

**REMARKS**

In the Office Action, dated August 4, 2003, the Examiner states that Claims 1-10 are pending and Claims 1-10 are rejected. By the present Amendment, Applicant amends the claims.

In the Office Action, Claim 10 is objected to for insufficient antecedent basis in Claim 1. Claim 10 has been amended to correct this.

In the Office Action, Claims 1-5 and 10 are rejected under 35 U.S.C. §102(b) as anticipated by Day (US 2,416,823). Claims 1, 6, 8 and 9 are rejected under 35 U.S.C. §103(a) as unpatentable over Baltor (US 2,471,997) in view of DeRidder (US 5,730,154). Claims 1 and 7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Baltor in view of Beeman (US 3,595,225). The Applicant respectfully disagrees with these rejections in view of amended Claim 1.

Claim 1 has been amended to state that the complete brace is located distally of the metatarsal joint, and to clarify that the brace comprises a frame, sized and configured to be located substantially under the toes. The amendment also clarifies how the points relate to the frame. Support for this amendment may be found on page 2, lines 11-12 of the specification as filed.

Applicant believes the amendment adds no new matter which would require a further search/consideration by the Examiner. However, if the Examiner requires that a Request for continued Examination (RCE) be filed in order for the amendment to be considered, the Applicant requests that the Examiner contact the undersigned attorney by telephone so that the RCE may be filed before any extension of the term for response is required.

The cited reference, Day has already has been discussed in the Applicant's previous amendment. With the new wording of the Claim 1, the difference between the invention and the brace according to Day is even clearer. The brace according to Day is not designed to be located completely distally of the metatarsal joint, but in fact embraces the metatarsal joint. The brace

comprises a strap 44 and padding 36 located proximally of the metatarsal joint. In contrast, the present invention as claimed is located completely distally of the metatarsal joint and mainly under the toes. This results in a brace which does not hinder walking and does not take any room inside the user's shoe.

The present invention as claimed also differs substantially from the brace according to Baltor. This brace comprises interconnected rings adapted to be slipped over the toes for retraining the toes in correct relative position. Even though the brace is located completely distally of the metatarsal joint it lacks the essential feature of a frame, sized and configured to be located substantially only under the toes. The frame should have a first end providing a first support point on the medial side of the first phalanx of the big toe, and a second end providing another support point on the ball of the foot. (The second end is the lever arm of Claim 2.) In contrast to a set of interconnected rings, the width of such a frame between these two support points is not critical. Also, the frame provides a further support point between the big toe and the second toe on the lateral side of the distal end of the big toe. These three points are the only ones that are required to correct the position of the big toe. Also, because of this design of the frame, a distal pad adapted to press on the distal end of the first phalanx of the big toe may be disposed on an arm adjustably disposed on the brace resulting in that the brace, according to the present invention, is adaptive and may fit various sizes of feet and big toes. This is in contrast to the brace according to Baltor having no means of adjusting the position of the interconnected rings relative to each other and the size of the rings.

The DeRidder, Beeman, and Nakamura references are believed to be only tangential and not requiring further comment.


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In light of the foregoing response, all the outstanding objections and rejections have been overcome. Applicant respectfully submits that this application should now be in better condition for allowance and respectfully requests favorable consideration.

Respectfully submitted,

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Date

  
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